

Date: May 23, 2011

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
From: Mark D. Ahrendsen, Transportation Director
Harmon E. Crutchfield, Assistant Transportation Director
Subject: Memorandum of Understanding for the North Parking Garage at
American Tobacco Campus

Executive Summary

Capitol Broadcasting Company (CBC) and American Campus, LLC (American Campus) have made a request to the City of Durham (City) to lease the majority of the parking spaces (985 of 1320) and manage all parking activities 24 hours a day within the North Parking garage. In August 2003, the City and CBC and American Campus entered into a public-private partnership for the redevelopment of the American Tobacco property located in downtown Durham. The City, CBC, and American Campus entered into the following agreements: the Development Agreement, a Parking Lease Agreement (with a possible 20-year term), and a Parking Management Agreement (with a possible 20-year term).

CBC and American Campus currently lease and manage the entire South Parking garage owned by Durham County and the East Parking garage, owned by CBC 24 hours a day. Therefore, CBC and American Campus currently lease and/or manage the majority of all parking within the American Tobacco Complex. American Campus, LLC and CBC request that the majority of parking spaces intended to serve the American Tobacco Campus be leased by owners and users of the American Tobacco Campus and that all parking activities be managed by the same entity in order to improve the long term management efficiency and effectiveness of all parking functions provided within the American Tobacco Complex.

As a result of this request from CBC and American Campus, the City entered into discussions with CBC. The Administration feels that the long term management and economic success of the American Tobacco Project would be enhanced through the long term leasing of the majority of parking spaces available at the North Garage for use by the owners and users of the American Tobacco Campus and hereby recommends approval of the attached Memorandum of Understanding (MOU) by the City of Durham and American Campus. The MOU establishes the general guidelines by which more detailed agreement(s) would be developed and ultimately approved by City Council.

Recommendation

The Transportation Department recommends that the City Council authorize the City Manager to execute the Memorandum of Understanding (MOU) for the North Parking Garage at American Tobacco Campus between the City of Durham and American Campus,

LLC (American Campus) and to negotiate a new lease agreement and parking management agreement consistent with the terms of the MOU.

Background

In August 2003, the City and CBC and American Campus entered into a public-private partnership for the redevelopment of the American Tobacco property located in downtown Durham. The City, CBC, and American Campus entered into the following agreements: Development Agreement, Parking Lease Agreement (with a possible 20-year term), and Parking Management Agreement (with a possible 20-year term). Through these agreements, CBC leases 49% (573) of the parking spaces in the North Parking garage during the periods of 7:00 am through 6:30 pm, Monday through Friday and up to 200 parking spaces from 6:30 pm through 8:00 pm, Monday through Friday, and from 9:00 am through 1:00 pm, Saturday. The City also has a parking management agreement with American Campus, LLC to manage the North Parking garage during the hours of 7:00 am through 6:30 pm, Monday through Friday for all of the parking spaces and from 6:30 pm through 8:00 pm, Monday through Friday, and from 9:00 am through 1:00 pm, Saturday, for up to 200 Leased spaces. The City has the option of operating the North Parking garage beyond the hours identified and consequently all special event activities are provided by the City through its management contract with Lanier Parking of Durham, LLC.

In addition, CBC and American Campus currently lease and manage the entire South Parking garage owned by Durham County and the East Parking garage owned by CBC 24 hours a day. Therefore, CBC and American Campus currently lease and/or manage the majority of all parking within the American Tobacco Complex. American Campus, LLC and CBC have requested that the City (i) lease to American Campus all available parking spaces in the North Parking garage and (ii) have American Campus manage the North Parking garage over a potential 40-year term. As a result of this request from CBC and American Campus, the City entered into discussions with CBC. The goal of the discussions was to develop an MOU that provided CBC and American Campus the ability to lease and operate parking facilities at the American Campus Complex as effectively and efficiently as possible from a customer viewpoint.

Issues and Analysis

The MOU addresses the following items as outlined below:

1. Lease and Management Term - Up to a total of 40 years. The term includes an initial 10-year term, then up to six (6) additional options (exercisable by American Campus, LLC) to extend for 5-year terms each. (Before the City can accept the negotiated parking lease agreement, it must be subject to an upset bid process as the term is in excess of 10 years).
2. Parking Rate - City will charge the Tenant the lesser of (i) the going rate established for downtown Durham parking garages, or (ii) a "Maximum Parking Rate" increased annually by 3%.
3. Parking Management Fee – American Campus will continue to be responsible for management responsibilities of the North Parking garage. The City will pay the American Campus manager at an agreed upon rate. The rate will be \$19.20 per space adjusted by the CPI annually until 2025, at which time it will be re-set at a rate calculated by using \$17.20 as the rate in 2011 and adjusting that rate by

the CPI each year from 2012 through 2024. The fee will then be adjusted annually thereafter according to the CPI, subject to a cap on the amount of the annual increase of 3% per annum.

4. Special Event Parking – Both the Parking Lease Agreement and the Parking Management Agreement will require American Campus to allow for and require management of special events parking at the North Deck to accommodate usage by patrons of the DPAC, the DBAP or other large, nearby events. The American Campus manager will pay the City 35% of gross revenues collected from Special Events parking.
5. Parking Sublease Requirements – The Tenant will not be able to sublease spaces for more than the parking rate charged by the City. Also, the Tenant will be required to enter into long term sublease agreements with the owners of the Noell and Old Bull buildings and the Lucky Strike building (under the same terms as between the City and the Tenant) to ensure the continued provision of long term parking within American Tobacco Campus for those buildings not owned or managed by CBC.
6. Management of “Visitor Spaces” – The American Campus manager will be allowed to charge for the use of some or all of the 155 Visitor Parking spaces located on the first level of the North Deck with approval of the City if the American Campus manager pays for the installation and operation of the necessary equipment to manage such Charged Visitor Spaces and pays the City a parking rate equal to that of the spaces leased by the Tenant. The American Campus manager shall have the right to retain any revenues collected from the Charged Visitor Spaces.
7. Development Agreement Modifications – The new agreement(s) will necessitate modifications to the original Development Agreement entered into among the City, American Campus LLC and CBC.

To fulfill the requirements of this agreement, the City will have to initiate an upset bid process for the long term parking lease agreement. The Administration feels that these agreements would contribute to the long term economic and management success of the entire American Tobacco Campus, which would be of great benefit to the general public and ensure the continued economic growth and development of downtown Durham.

There are clearly many issues associated with CBC and American Campus assuming responsibility for the leasing of 985 parking spaces and management of all parking activities at the North Parking garage 24 hours a day. The major issues are addressed in the attached Memorandum of Understanding (MOU) and include financial responsibility for leasing and management of parking activities. The attached MOU represents the general guidelines by which more detailed agreement(s) would be completed and approved.

Alternatives

- Approve the Memorandum of Understanding between the City of Durham and American Campus, LLC to authorize negotiation of a new Parking Lease agreement, Parking Management Agreement, and modification to the existing Development

Agreement.

- Continue the current agreements with Capitol Broadcasting Company and American Campus, LLC.

Financial Impact

Under the terms of the attached MOU, the City will continue to receive \$45.00 per space for 985 parking spaces leased by CBC. Likewise, the City will continue to pay \$19.20 per space (adjusted annually by CPI until 2025 at which time the management fee will be reset) for management of the North Parking garage. Under the terms of the Development Agreement, the City will continue to provide an incentive fee of \$17.00 per space through 2015. Should the parking rate established by the City for the North Garage change, the incentive fee will change by a commensurate amount. In addition, the City will receive 35% of gross revenue from special event parking. This is equivalent to current level of revenue received from special event parking managed by Lanier Parking of Durham, LLC.

SDBE Summary

The SDBE Summary is not applicable.

Attachment

Memorandum of Understanding for the North Parking Garage at American Tobacco Campus